

## SECTION VI GENERAL REGULATIONS

**6.1 NONCONFORMING USES** - The lawful use of any structure of land existing at the time of enactment or subsequent amendment of this By-law may be continued although such structure or use does not conform with provisions of the By-law, subject to the following conditions: \*

\* Note: Mass. Gen. Laws C. 40A Sec. 6 attached (last few pages)

6.1.1 Alteration or extension - No addition to or increase in the extent of a non-conforming use of a structure or land may be made, except that the Board of Appeals may grant a Special Permit for expansion of existing campgrounds, mobile home parks, motels or motor courts, and cottage colonies using only those parcels employed at the time the use was made non-conforming.

6.1.2 Restoration - In case of destruction or damage by fire or other catastrophe, a legally non-conforming structure may be rebuilt in substantially the form it had at the time of the destruction or damage, or in any form if within applicable set-back requirements in accordance with existing building code requirements, and not larger than previously (provided that reconstruction is started within twelve month and completed within twenty-four months of the catastrophe).

6.1.3 Changes - A non-conforming use may be changed to a more nearly conforming use and once changed to a more nearly conforming or conforming use, no structure or land shall be permitted to revert to a less conforming use.

6.1.4 Discontinuance or Abandonment - A non-conforming use, which has been abandoned, shall not be reestablished. Any non-conforming use discontinued for a period of two years or more shall not be reestablished, and any future use shall conform with this By-law, unless reestablishment is authorized by Special Permit from the Board of Appeals, upon its determination that the discontinuation occurred despite good faith efforts of the owner to reestablish the use within two years, and that reasonable efforts will be made to mitigate any harmful impact upon the vicinity. (Amended 4/30/85 ATM, Art. 20)

6.1.5 Alterations to non-conforming single or two-family residential structures.

6.1.5.1 Non-conforming single or two-family residential structures may be altered if:

(a) the Building Inspector determines that the alteration will not increase the non-conforming nature of the structure; or

(b) if the alteration will increase the non-conforming nature of the structure, the Zoning Board of Appeals issues a special permit after determining that the alteration is not substantially more detrimental to the neighborhood than the existing non-conforming structure.

6.1.5.2 Conforming single and two-family residential structures located on non-conforming lots may be altered if:

(a) the structure after the alteration will continue to conform; or

(b) if the structure after the alteration will not continue to conform, the zoning Board of Appeals issues a special permit after determining the alteration is not substantially more detrimental to the neighborhood than the existing non-conforming use.

6.1.5.3 Permits issued under subsection (1) (b) and (2) (b) of this section shall be subject to the provisions of subsections 8.4.2.4 and 8.4.3.5 of this bylaw. In making the determination to issue the permit, the Zoning Board of Appeals may consider other criteria in Section 8.4.2.

6.1.5.4 For purposes of this section:

(a) "alteration" means any alteration, reconstruction, extension, structural change, or replacement; and

(b) an "increase in the non-conforming nature of the structure" means any alteration that results in an increase in the volume of that portion of the structure presently non-conforming.

**6.2 ACCESSORY BUILDING** - No accessory building or structure, except a shed, permitted sign or a temporary roadside stand, shall be located within a required front or side yard area or nearer to the rear lot line than 10 feet. Sheds, as defined in Section II of this By-law, must be located a minimum of 30 feet from the front line and 5 feet from the side and rear lines. The door or access to a shed must be to the inside of the property on which it is located if a shed is located within 25 feet of the side lot line or 10 feet of the rear lot line.

**6.3 PARKING REQUIREMENTS** - Any building hereinafter constructed or converted to another use shall be so located on its parcel of land that there may be provided adequate off-street parking areas in conformance with the following minimum standards: (Amended 4/30/85 ATM, Art. 66)

6.3.1 Stores - Retail Business - At least two spaces for each establishment or one space for each 150 square feet of floor area, whichever is larger, plus one space for each three employees or nearest multiple thereof.

6.3.2 Office - Banks and Similar Business - One space for each 150 square feet of floor area plus one space for each three employees or nearest multiple thereof.

6.3.3 Inns, Motels, Tourist Homes, etc. - One space for each two sleeping accommodations plus one space for each three employees. Each double bed to be considered two sleeping accommodations.

6.3.4 Theater, Funeral Homes and Places of Assembly - One space for each four seats.

6.3.5 Restaurants - Places Serving Food or Beverages - One space for each four seats plus one space for each three employees or nearest multiple thereof.

6.3.6 Residential Areas - Two spaces for each individual dwelling unit except in the case of apartments where 1 ½ spaces shall be provided for each unit.

6.3.7 Non-Residential Uses - In all other cases of non-residential uses in a residential area, there shall be provided at least one space for each three employees plus one space for each 150 square feet of gross floor area.

6.3.8 Industrial, Manufacture and Wholesale Uses - One space for each three employees based on the maximum number of employees the plant is designed to employ.

6.3.9 Bowling Alleys - Four spaces for each alley.

6.3.10 Guest House - One space for each sleeping room.

6.3.11 Health Care Clinic, Medical or Dental Center or Professional Offices - Four spaces for 800 square feet of floor area plus one space for each two employees.

6.3.12 Bed and Breakfast - In addition to the requirements for two parking spaces for each individual dwelling unit as specified by 6.3.6, one parking space shall be provided for each

bedroom in a new Bed and Breakfast and for each bedroom added to an existing Bed and Breakfast.

6.3.13a Other Uses - Parking requirements for all other uses not specifically mentioned shall be determined by the Board of Appeals for those uses controlled by special permit and by the Board of Selectmen or by the Inspector of Building appointed by the Board for those allowed uses unless such use is subject to the provisions of Section 6.3.13 of this By-law.

6.3.13b Central District Parking - Lots that are partly within the Central District and partly within the R1 Residential District may use the R1 portion of their lot for parking with a special permit from the Zoning Board of Appeals provided that adequate measures are taken to mitigate any adverse impact on abutting properties. Such mitigation may include, but not be limited to, fencing or screening to control the visibility of the parking, access to the parking area that protects public safety and is consistent with existing traffic patterns and flow.

6.3.13 "Development of Significant Impact" - Applicants for Special Permits for uses so controlled and which involve required parking for ten or more cars, or involve more than 4,000 square feet floor area of new construction or for any adult entertainment use regulated herein under section 6.20 **or uses in the Main Street Overlay District herein under sections 9.2-9.5** and regardless of floor area or the number of parking spaces, shall submit to the Board of Appeals three copies of the following:

- a) an application;
- b) a site plan prepared by an architect, landscape architect, or Registered Professional Engineer, showing proposed structures, drives, parking, landscaping, screening and drainage;
- c) a ground floor plan and elevation of all proposed building and elevations of proposed signs; photographs of the premises and all adjoining structures.

Forthwith upon receipt of the above materials, the Board of Appeals shall transmit one set of them to the Planning Board for their review and recommendation. (Amended 4/25/06)

6.3.14 Developer-Funded Impact Studies for "Development of Significant Impact" - The following developer-funded impact studies shall be required for "Developments of Significant Impact" unless deemed unnecessary by the involved Town board(s):

- (a) A traffic impact study to determine the development's effect on road traffic-carrying capacity, road physical environment, and traffic and pedestrian safety.
- (b) A financial impact study to determine the development's effect on public service expenditures for administrative, police, fire, school and road maintenance services.

6.3.15 Egress - Any driveway likely to carry more than 200 trips per average summer business day must comply with the following unless the Board of Appeals grants a special permit for an alternative configuration, upon its determination that safety will be adequately protected, based on commonly employed engineering standards, or unless the Massachusetts Department of Public Works imposes requirements precluding compliance: (Added 9/22/86 STM, Art. 33)

	<b>On Route 6</b>	<b>Other Locations</b>
Existing vehicle unobstructed sight distance at edge of traveled way	350 feet	200 feet
Driveway centerline separation from other driveway serving 100+ trips	275 feet	100 feet

	<b>On Route 6</b>	<b>Other Locations</b>
Driveway centerline separation from intersecting street sideline	150 feet	50 feet
Maximum driveway width unless greater width justified by engineered design	24 feet	18 feet
Minimum curb radius	50 feet	25 feet
Acceleration/deceleration lanes required	Yes	No

No existing parcel shall be divided into lots with frontage, which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

**6.4 LOADING AND UNLOADING AREAS** - Berths shall be provided for the loading and unloading of stock, merchandise, equipment, supplies and other usual business and industrial commodities in accordance with the following conditions:

6.4.1 Retail Store and Service Establishments - For each retail store or service establishment with gross floor area of from 3,000 to 8,000 square feet at least one berth. Additional berths at the rate of one berth for each additional 8,000 square feet or nearest multiple thereof.

6.4.2 Manufacturing, Industrial and Other Commercial Use - One berth shall be provided for floor area up to 8,000 square feet and for larger floor areas additional berths as required by the Board of Appeals.

## 6.5 WINDMILLS

6.5.1 Windmills shall be permitted by a special permit from the Board of Appeals. No special permit for a windmill shall be granted unless the Board of Appeals makes a finding that the windmill complies with the following conditions:

6.5.1.1 The minimum setback distance for all windmills from any abutter's property line shall be at least equal to the maximum height of the machine from grade plus twenty (20) feet. Set backs will be measured to the center of the tower base.

6.5.1.2 The maximum tower height shall be sixty-five (65) feet from grade to the center of the rotor.

6.5.1.3 Climbing access to the windmill tower shall be limited either by (I) the installation of a fence with locked gate around tower base or by (II) limiting tower climbing apparatus to no lower than ten (10) feet from the ground. If a fence is used, it shall be no lower than five (5) feet and constructed in such a manner as to restrict passage through said fence, including such construction as stockade, woven wood, chain link, etc., but excluding split rail.

6.5.1.4 The diameter of a rotor may not exceed thirty-five (35) feet. The minimum height of the rotor shall not be less than fifteen (15) feet from the ground as measured from the lowest point of the arc of the rotor.

6.5.1.5 The windmill shall not generate excessive noise, cause interruption of television or radio station reception or otherwise constitute a public nuisance.

6.5.2 A windmill will be considered abandoned if not operated for a period of two years or if it is designated as a safety hazard or a public nuisance by the Building Inspector. Once a windmill is designated as abandoned, the owner shall be required to immediately dismantle it.

6.5.3 For the purposes of the by-law the following definitions shall be applied: (I) windmill - a device which converts wind energy to mechanical or electrical energy; (II) rotor - the blades plus the hub to which the blades of a windmill tower are attached.

6.5.4 Before applying for a special permit under this section, the applicant shall obtain the Building Inspector's approval of the proposed windmill. The Building Inspector shall approve the proposed windmill upon making the determination that it (I) will not constitute a safety hazard of a public nuisance and (II) complies with the State Building Code and any other applicable law. The Building Inspector's approval required herein shall be in addition to the building permit required by Section 8.2 of this by-law.

**6.6 CLUSTER RESIDENTIAL DEVELOPMENTS** - The Planning Board is hereby designated the special permit granting authority for all cluster residential developments and shall have the power to hear and decide applications for special permits as provided by this section.

6.6.1 Objective - to allow intensive use of land while at the same time maintaining existing character; preserve open space for conservation and recreation; introduce variety and choice into residential development; meet housing needs; and facilitate economical and efficient provision of public services.

6.6.2 Application - Applicants shall submit five (5) copies of an application and plans which shall comply with the requirements of the Wellfleet Subdivision Control Regulations and which shall also indicate proposed land and building area, location of common open space and upland area. A registered land surveyor or equivalent licensed professional shall prepare the plans. Preliminary subdivision plans, if any, should be submitted to the Planning Board prior to the application for a special permit. The definitive subdivision plan shall be submitted with the special permit application. The Planning Board shall transmit copies of the application and plans to the Board of Health, Conservation Commission, Fire Department or any other agencies whose review is sought. Those agencies shall submit reports to the Planning Board within 35 days of the referral and the Planning Board shall make no decision upon the application until receipt of all such reports or until 35 days have elapsed. The Planning Board may hold public hearings under Ch. 41, the Subdivision Control Law and the special permit simultaneously.

6.6.3 Other Materials - The application materials shall indicate each landowners interest in the land to be developed, the form of organization proposed to own and maintain the open space and any common facility, the substance of covenants and grants of easements to be imposed upon the use of land or structures, and a development schedule.

6.6.4 Minimum Area/Number of Dwelling Units - A cluster development shall encompass at least 15 acres of contiguous land. The maximum number of dwelling units per cluster development shall equal the total upland area (minus land for road construction) divided by the minimum lot size in that district; if the development includes land in more than one district, the largest lot size shall be used to calculate the number of units allowed.

6.6.5 Open Space - Open space shall be preserved for recreation or conservation and shall include not less than 25% of the upland within the cluster development. The open space shall either be conveyed to and accepted by the Town or a non-profit organization, the principal purpose of which is the preservation of open space, or a corporation or trust owned or to be owned by the owners of lots or residential units in the development. If such a corporation or trust is used, ownership thereof shall pass with conveyance of the land or residential units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded, providing that such land be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadways.

6.6.6 Dimension Requirement for Cluster Development –

Minimum Lot Size	10,000 square feet
Minimum Frontage	no requirement
Minimum Front Yard	no requirement
Minimum Side Yard	no requirement
Minimum Rear Lot	no requirement
Maximum Lot Coverage	15%
Maximum Height	See Section 5.4.4

Setback from boundary of development: structures in the cluster development shall be sited to minimize the impact on abutting property; no structure within a cluster may come closer to the boundary of the development than 35 feet. The minimum distance between dwelling units shall be 25 feet. The permitting authority may reduce these dimensional requirements upon clear demonstration that the proposed development offers exceptional advantages.

6.6.7 Drinking Water - The provisions for drinking water to each dwelling unit shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts.

6.6.8 Wastewater Disposal - The provisions for wastewater disposal shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts. No private septage or sewage treatment facility or advanced wastewater treatment equipment shall be used in cluster development.

6.6.9 Roads –

- a) Pervious surfaces may be used except where grades require pavement.
- b) Right of way for roads may be reduced to 30 feet at the discretion of the Planning Board.
- c) Roadway width shall be minimum consistent with access for emergency vehicles.
- d) The road layout shall minimize cutting and grading.
- e) Other requirements of the Wellfleet Subdivision Control Regulations with regard to road design shall be complied with.

6.6.10 Utilities and Easements - All utilities shall be installed underground. Easements shall be provided for public water, sewers, gas, and where applicable telecommunication services. Underwater storage of water for fire protection shall be provided in a manner acceptable to the Wellfleet Fire Department.

6.6.11 Clearing of Site - The site shall not be cleared prior to submission to and review by the Planning Board of a preliminary plan; or, if no preliminary is submitted prior to submission to and approval by the Planning Board of the definitive plan.

6.6.12 Design Guidelines - Applicants are encouraged to apply, where pertinent, the recommendations for Compact Residential Developments as set forth in pages 44 through 48 of "A Design Guideline Manual for Sustainable Development on Cape Cod" which is available from the Building Inspector, the Town Planner or the Cape Cod Commission.

6.6.13 Criteria - Special Permits for cluster development may be made upon the determination of the Planning Board that the plan meets all requirements of the Zoning Bylaw and is preferable to a conventional grid-type subdivision in preserving open space for conservation or recreation, in utilizing natural features of the land, in allowing more efficient provision of streets, utilities and other public services.

**6.7 COMMERCIAL, INDUSTRIAL AND GENERAL USE STANDARDS** - No activity shall be permitted in any district of the town unless its operation is conducted so that any noise, vibration, flashing, cinders, dust, fumes gasses, odors, smoke, radiation and electromagnetic interferences can be and are effectively confined to the premises. No such activity shall be allowed which is detrimental to neighboring property by reasons of special danger of fire or explosion.

6.7.1 Denial of Permit – The Board of Selectmen or person designated by it, whichever may be responsible for the issuance of building or use permits, shall, subject to the applicant's right of appeal, deny a building, use, or occupancy permit if in his opinion he has reason to believe that said permit if issued and resulting use of said premises is contrary to the intent of this section.

6.7.2 Right of Appeal - Any applicant denied a permit under the provisions of this section shall have the right of appeal to the Board of Appeals and said Board, following a hearing with due notice thereof, may order the issuance of said permit if it finds that action taken in denying said permit was without sufficient reason.

**6.8 BURNING OF COVER** - Within the National Seashore Park District there shall be no burning of cover unless determined by the proper official to be necessary for the welfare and safety of the town and then such burning shall be in accordance with the requirements of Section 13, Chapter 48 of Massachusetts General Laws.

**6.9 CUTTING OF TIMBER** - Within the National Seashore Park District there shall be no cutting of timber except for the following reasons:

- (a) by an owner for the purpose of reasonably controlling brush or trees;
- (b) maintenance cutting in pastures;
- (c) cutting for clearance or maintenance on right-of-way including those pertaining to public utilities or public highways.

**6.10 DRAINAGE AND DAMMING** - Within the National Seashore Park District there shall be no drainage, damming or relocating of any water course, except by publicly authorized agency for the purpose of pest control.

**6.11 CONDOMINIUM** - Amended 4/25/88.( Repealed 4/25/2006)

**6.12 LANDSCAPING** - (Added 4/29/86 ATM, Art. 21)

The following requirements are intended to assure that vegetation provides visual contrast, separation between premises, and some protection from sun and wind. Alternatives to the following specifications may be authorized on approval of the Special Permit Granting Authority as a condition of the Special Permit based on the following criteria, taking into consideration existing vegetation, soils, and other site conditions, provided that effective screening, shading, and definition of property lines are achieved.

6.12.1 Perimeter Buffering - Parking areas for ten or more cars, outdoor storage areas, loading facilities, or similar service areas shall be separated from the Route 6 right-of-way by at least 35 feet, from all property lines in the Central District by at least 3 feet, and from all other property lines by at least 10 feet.

Alternatively, separation from Route 6 may be reduced to 20 feet and separation from all other property lines may be reduced to 5 feet, provided that not less than 20% of lot area is maintained with vegetative cover.

Yards between parking, storage, loading, and service areas and property lines, including those bordering route 6, shall be vegetated (excepting drives, walks, tidal flats, etc.), through retention of existing plants and trees, or, where this is impossible, planted with native species, and must include trees (2' in caliper) sufficient in number that, if evenly spaced (which they need not be) their crowns would approximately meet each other at maturity. Brush or shrubbery must initially be essentially continuous to three feet or more in height, with mature height of at least four feet, except where that interferes with driver visibility. In the Central District, a combination of fencing and landscaping may be used where continuity of vegetation is inappropriate or impossible.

6.12.2 Parking Lot Plantings - Parking lots for 10 or more cars shall contain or be bordered within five feet by at least one tree per 10 parking spaces, trees to be of 2" caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree. Trees and shrubs that die must be replaced within twelve months. One required parking space may be omitted for each 300 square feet of planting area within the parking lot, on approval of the Board of Appeals as a condition of the Special Permit, upon the Board's determination that parking demand will still be adequately served.

### **6.13 FLOODPLAIN DISTRICT ZONING REGULATION**

(Added 4/30/85 ATM, Art. 56)

6.13.1 Floodplain District - The Floodplain District is herein established as an overlay district. The underlying permitted uses are allowed, provided they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction of Floodplain, Section 744.0.

The Floodplain District includes all special flood hazard areas designated as Zones A, AO, AH, V3, V4, V5, V6 A1-30 on the Wellfleet Flood Insurance Rate Map (FIRM) dated June 19, 1985, as amended, on file with the Building Inspector and the Conservation Commission. This map as well as the accompanying Wellfleet Flood Insurance Study are incorporated herein by reference.

6.13.2 Development Regulations - The following requirements apply in the Floodplain District:

- a) Within Zone A, where the 100 year flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data, and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation and flood-proofing requirements, as appropriate, of the State Building Code.
- b) In the A0 zones, new structures shall be elevated above the crown of the nearest street or above the depth number found on the Flood Insurance Rate Map (FIRM).
- c) Within the Floodplain District are areas designated as coastal high hazard areas (Zone V). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provisions shall apply:

1. All new construction shall be located landward of the reach of the mean high tide.

**6.14 SPECIAL FLOOD HAZARD DISTRICT REGULATIONS** - (Added 4/30/85 ATM, Art. 57) - In special flood hazard areas subject to high wave impact and/or severe flood inundation (Zone V3, V4, V5, V6, A3, A4, A5) of the Wellfleet Flood Insurance Rate Map (FIRM) for the Town of Wellfleet dated June 19, 1985 and in accordance with any revisions or issuance, no new building shall be erected or constructed and no new subsurface disposal system installed except as authorized or required by the Board of Health; no paving; no existing structure shall be enlarged; no structure shall be moved except as landward of the reach of mean high tide; no dumping; no filling or earth transfer shall be permitted except as authorized by the Conservation Commission; and there shall be no additional mobile homes. Amended 5/5/87 ATM, Art. 73)

6.14.1 Within these zones the following uses are permitted:

6.14.1.1 Conservation of water courses, plants and wildlife.

6.14.1.2 Outdoor recreation, including play areas, nature study, boating, fishing including shellfishing and marine aquaculture, and hunting where otherwise legally permitted, temporary structures relating to carnivals and recreational activities.

6.14.1.3 Grazing, farming, agriculture and the harvesting of crops.

6.14.1.4 Temporary non-residential structures used in connection with fishing, shellfishing, aquaculture, harvesting, storage or sale of products raised in the premises.

6.14.1.5 Dwellings, signs and parking lots lawfully existing prior to the adoption of these provisions.

6.14.1.6 Utility lines and facilities, and sewerage pipes installed according to plans approved by the Board of Health, the Conservation Commission and the Plumbing Inspector.

6.14.1.7 Boardwalks, wooden stairways, snow fences.

6.14.1.8 Non-Commercial signs (as permitted in the residential districts, Section 7.2 of the Wellfleet Zoning By-law) provided such uses do not affect the natural flow of any watercourse.

6.14.2 Lot requirements for uses allowed in the underlying zone may be comprised of up to 40% of floodplain district land, provided all structures and related facilities are confined to that portion of the lot situated outside of the floodplain district.

6.14.3 To appeal the restrictions in this section, application may be made to the Wellfleet Board of Appeals for a floodplain exemption from this floodplain bylaw in accordance with the following conditions:

6.14.3.1 A determination that the granting of an exemption will not result in increased flood heights, decreased flood storage capacity, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing local laws. ATM 4/25/88

6.14.3.2 Compliance in all respects with the State Building Code, Section 744.0. ATM 4/25/88

6.14.3.3 Approval of the Wellfleet Conservation Commission in accordance with MGL Chapter 131, S. 40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw.

6.14.4 If an exemption is granted to construct a structure below the base flood elevation, the Board of Appeals shall notify the applicant in writing over their signatures that the issuance of such an exemption will result in increased premium rates for flood insurance.

6.14.5 The Board of Appeals will maintain a record of all exemptions issued including justification for their issuance and report such exemptions issued in the Annual Report submitted to the Federal Insurance Administration.

**6.16 HOME INDUSTRY** - Home Industry (see definition) shall be allowed or allowed on special permit at locations as indicated in Section 5.3 Use Regulations, subject to the following: (Added 4/29/86 ATM, Art. 22)

6.16.1 For a Small Home Industry there shall be not more than four employees on the premises at any time who are not resident thereon, or eight such employees for a Larger Home Industry.

6.16.2 The floor area occupied by the business shall not exceed 2,000 square feet for a Larger Home Industry.

6.16.3 Regular outdoor parking of any vehicle having GVW rating in excess of 18,000 pounds or enclosed cargo area exceeding 500 cubic feet or a 12 passenger or larger bus shall be allowed only for a Larger Home Industry.

6.16.4 Any exterior storage of materials or equipment for a Home Industry must be so located and screened with evergreen plantings that it is not normally discernable from any location off the premises.

6.16.5 In the R2 District, Home Industry shall be approved on Special Permit only upon determination by the Board of Appeals that the industry is compatible with any potentially affected residential premises, that access poses no unusual hazard, that the use is likely to benefit year-round employment or service needs of the Town, and that the site plan minimizes visual intrusion of any parking or service areas.

## 6.17 CURB CUT PERMIT

6.17.1 Purposes - The purpose of this bylaw is to provide conformity in design and construction of entrances and exits onto public ways within the Town of Wellfleet, to provide maximum protection to the public through the orderly control of traffic moving on to and from a public way, to minimize soil/slope erosion, and to provide necessary drainage to areas adjacent to public ways.

### 6.17.2 Definitions

- (a) Adjacent property owner - a person or entity owning property bordering on a way.
- (b) Driveway - privately owned access to and from a way.
- (c) Way - a Town-owned road/way.

6.17.3 Procedure - Prior to commencing driveway construction, an adjacent property owner desiring to gain access to a Way shall make written application to the Director of the Wellfleet Department of Public Works and obtain a Curb Cut Permit from said department. The application shall include:

- (a) a plan showing location of the property, the proposed driveway, and the intersection of the driveway with the Way;
- (b) specific details of drainage when required;
- (c) specific provisions to minimize slope or soil erosion of necessary;
- (d) such other identifying information that may be requested by the DPW.

6.17.4 Design standards - The Director of the Department of Public Works in reviewing such application shall consider if the design and location of the proposed curb cut minimizes traffic hazards, the slope/soil erosion and provides adequate drainage.

6.17.5 Issuance - Upon review of the plans and a determination that the plans meet the above criteria, the DPW Director shall issue a CURB CUT PERMIT. Failure of the DPW Director to issue a permit within 10 days of the receipt of a completed application shall be deemed to be a grant of the curb cut permit as requested.

6.17.6 Appeal - Any person aggrieved by the inability to obtain the permit as requested, any appeal to the Zoning Board of Appeals within 30 days of the date of the decision of the Director of Public Works.

6.17.8 Fee - The Board of Selectmen shall have the authority from time to time, to set fees for this permit and any required inspections.

**6.18 COMMUNICATION STRUCTURES, BUILDINGS AND APPURTENANCES**  
**(Approved 2/18/97 by Attorney General –amended 7/17/98)**

6.18.1 Purpose. The purpose of this part of the Zoning bylaw is to establish requirements, guidelines, standards and procedures to regulate the permitting and installation of communication structures, buildings and appurtenances in a manner that minimizes adverse impacts in the Town of Wellfleet.

6.18.2 Requirements. The Planning Board is hereby designated the special permit granting authority for special permits issued under Section 6.18. No communication structure, building or appurtenance shall be erected, constructed or installed without first obtaining a special permit from the Planning Board. The Planning Board shall hold a public hearing within sixty-five days of the filing of an application and shall issue a decision within ninety days following the date of the public hearing.

6.18.2.1 No communication structure, building or appurtenance shall be installed within the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). Complete designation documents are available upon request and full-size boundary maps drawn on USGS topographic quad sheets may be viewed by appointment at the ACEC Program office, Department of Environmental Management (DEM), 100 Cambridge Street, Room 1404, Boston, MA 02202. Boundaries of ACEC's have been digitized and are available at the EOEA Data Center, 20 Somerset Street, 3rd floor, Boston, MA 02108. (617-727-3888)

6.18.2.2 Setbacks. the minimum distance from the perimeter of the communication structure to any property line shall be the height of the structure including any antennas or appurtenances plus 10 feet. The minimum distance from any guy wire, anchor or brace to any property line shall be the length of the guy wire or brace plus 10 feet. The setbacks for a communication building shall comply with the setback requirements of the zoning district.

6.18.2.3 Parking. Provisions for parking shall be in accordance with paragraph 6.3.7 of this Zoning bylaw.

6.18.2.4 Safety. Communication structure, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state and local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of a category 5 hurricane. If FAA or FCC regulations are changed then the owner or operator shall bring the structure, building and appurtenances into compliance with the new regulations within six months of the effective date of such regulations or earlier if a more stringent compliance schedule is included in the regulation. Failure to comply with any new regulations shall be grounds for removal of non-complying structure, buildings and appurtenances at the owner's expense.

6.18.2.5 Removal. An applicant and the land owner, if different from the applicant, must execute a covenant (or post a bond as set forth below) with the Planning Board agreeing to remove, within six months, all communication structures, buildings or appurtenances that have not been operated for four consecutive months unless the reason for non-operation is the result of major damage. In the event of major damage, the repair or removal of the structure, building or appurtenance must begin within six months of the damage date and must be completed within twelve months of the damage date. Failure to comply with the covenant shall be grounds for the removal of structures, buildings and appurtenances at the owner's expense. For the purpose of this paragraph, major damage shall mean damage to the communication structure or building caused through no fault of the owner or operator which prevents the owner or operator from using the equipment located thereon or therein. The applicant may as an alternative post a bond with the Treasurer of the Town of Wellfleet in an amount approved by the Planning Board and by an insurer approved by the Planning Board to cover the estimated costs of removal. If the applicant fails to remove the structure and/or buildings in accordance with the provisions of this paragraph, then the Town may use the bond to remove the structure and/or building and the balance of the funds, if any, will be returned to the applicant.

6.18.2.6 Fencing. Fencing shall be provided to control access to the site of the communication structure and building and shall be consistent with the character of abutting properties. Fencing is not required for antennas or other appurtenances mounted on a pre-existing structure.

6.18.2.7 Lighting. Communication structures and appurtenances shall be lighted only if required by the FAA. Lighting of communication buildings and the site shall be limited to lighting required to provide safe access and shall be shielded from abutting properties.

6.18.2.8 Signs. There shall be no signs except a sign identifying the facility and a telephone number where the owner or operator can be reached on a twenty-four hour basis; a no-trespassing sign; and any signs required to warn of danger. All signs shall comply with the requirements of this bylaw.

6.18.2.9 Visual. The installation of a communication structure, building or appurtenance shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional vegetative screening shall be employed where practical and particularly to screen abutting residential property whether developed or not.

6.18.2.10 Regional Criteria. Siting, to the extent it does not conflict with provisions of this Bylaw, shall be consistent with regional criteria established by the Cape Cod Commission.

6.18.2.11 Environmental.

(1) No hazardous waste shall be discharged on the site.

(2) All run-off of storm water from communication structures, buildings and appurtenances, driveways and parking areas shall be contained on site; the amount of impervious surface on the site shall be minimized. Any road or other surface on the lot shall comply with Article 7, Section 30 of the Wellfleet General Bylaw.

(3) Under normal operating conditions, noise emanating from the communication structure, building or appurtenance at the boundary of the lot on which it is sited shall not be greater than would otherwise exist in the absence of the communication structure, building or appurtenance. These requirements shall be met for wind conditions between calm and 100 miles per hour. In accordance with procedures approved by the Planning Board, the applicant shall measure the sound level at the boundary of the site on which the communication structure, building or appurtenance will be sited before any development takes place and shall demonstrate by measurements that the sound level at the boundary during normal operation does not exceed the levels before development.

6.18.2.12 Siting standards. In addition to the other requirements of this bylaw the applicant must comply with the following standards.

A. Communication structures and appurtenances shall, if feasible, be located on pre-existing structures, provided such installation shall preserve the character of the structure. The applicant has the burden of proving that there are no feasible pre-existing structures.

B. If the applicant demonstrates that there are no feasible pre-existing structures, then a communication structure, building and appurtenances shall, if feasible, be located on public land. The applicant shall have the burden of proving that there is no available public land.

C. Multiple, small towers are preferred to a single high tower.

D. Multiple antennas on a single structure at a single site are preferred if technically feasible, to multiple towers with fewer antennas.

E. Appurtenances mounted on or installed within an existing structure shall not increase the height of the structure. Any alteration of the appearance of the structure shall be minimized by design features which minimize the visibility of the appurtenance by the use of matching colors and textures and minimizing changes to the outside of the structure.

6.18.2.13 Pre-Application consultation. At least 30 days before submitted an application for a special permit for the installation of a communication structure, building or appurtenance the applicant shall consult with the Planning Board. The purpose of the consultation is to facilitate the permitting of communication structures, buildings and appurtenances by the exchanges of information between the applicant and the Planning Board in order to clarify and resolve concerns of the Board and to minimize potential problems with the application.

The applicant shall submit the following written information to the Planning Board:

A. A survey of all sites for the installation of communication structures, buildings or appurtenances which are feasible for providing the intended services. The survey shall include a rationale for the selection of a prime and at least one alternative site. All sites in Wellfleet shall be located on the appropriate sheet(s) of the Wellfleet Assessor's Atlas;

B. A survey of all pre-existing structures which are capable of supporting the equipment necessary to provide the intended service and a technical report which demonstrates why any such structure cannot be used by the applicant;

C. The radiation pattern of all proposed antennas showing the frequency and intensity of radiation between ground level and 28 feet above ground level at all locations within Wellfleet;

D. Calculation of the sound level in decibels between ground level and 28 feet above ground level at 10, 50, 100 and 500 feet from the communication structure, building or appurtenance for wind velocities between calm and 100 miles per hour with all equipment operating at normal levels.

E. A delineation on the Assessor's Atlas of all areas in Wellfleet which will not be served by the proposed installation for the prime and an alternate site;

F. A statement of the services to be supported by the proposed communication structure, building or appurtenance;

G. A description of special design features to minimize the visual impact of proposed communication structures, buildings and appurtenances;

H. A certification that the applicant has complied with all federal and state requirements to provide the proposed service; and,

I. Within thirty days after the pre-application consultation, the applicant shall arrange to fly a three-foot diameter balloon at the primary and an alternate site at the maximum height of the proposed installation. The date and location of the flights shall be advertised at least 14 days, but not more than 21 days, before the flights in a newspaper with a general circulation in the Town of Wellfleet.

6.18.2.14 Application Submittal Requirements. All written information submitted in accordance with Section 6.18.2.15 and 6.18.2.16 shall be certified by an appropriate licensed professional.

6.18.2.15 Applications for siting on public land or on a pre-existing structure. If a communication structure, building or appurtenance is to be installed on a pre-existing private structure or on land or a structure owned, prior to the effective date of this Bylaw, by the federal government or the Commonwealth of Massachusetts, or on land or a structure owned by the town of Wellfleet, the applicant shall submit the following written information to the Planning Board:

A. A draft contract between the applicant and the owner (if different from the applicant).

B. A description of the proposed facility at the proposed prime and alternate sites including:

1. Height of the facility and its associated equipment and antennas;
2. Access roads and power supplies;
3. Type size and number of transmitters.

C. A site plan (scale not less than 1 inch = 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, 100 year flood zones waterways, wetlands and all associated equipment and structures on the site including elevations of all equipment and structures including sufficient detail to delineate the external finish of all structures and equipment; and,

D. A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters.

6.18.2.16 For all applications other than those set forth in 6.18.2.15, the applicant shall submit the following written information to the Planning Board:

A. A statement of the purpose for which the applications is made;

B. The exact legal name of each person seeking a special permit and the address or principal place of business of each such person. If any applicant is a corporation, trust, association, or other organized group, it shall also give the state under which it was created or organized;

C. The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;

D. A statement of the need for the proposed facility with as much specific information as is practicable to demonstrate the need including a description of the proposed system and how the proposed facility would eliminate or alleviate any existing deficiency or limitation;

E. A statement of the benefits expected from the proposed facility with as much information as is practicable;

F. A description of the proposed facility at the proposed prime and alternate sites including:

1. Height of the facility and its associated equipment and antennas;
2. Access roads and power supplies;
3. Special design features;
4. Type, size and number of transmitters and receivers, as well as the signal frequency, power output, and power density at the tower base, site boundary, and building where people might be exposed to the maximum power densities from the facility;
5. A map showing any fixed facilities with which the proposed facility would interact;
6. The coverage signal strength, and integration of the proposed facility with any adjacent fixed facility, to be accompanied by propagation maps showing interfaces with any adjacent service areas; and,
7. A forecast of when maximum capability would be reached for the proposed facility and for facilities that would be integrated with the proposed facility;
8. Calculations confirming compliance with the structural, acoustical, environmental and siting requirements of paragraph 6.18.2.

G. A description of the proposed prime and alternative site, including:

1. The most recent U.S.C.G. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the site of the facility and any significant changes within a one mile radius of the site;
2. A map (scale not less than 1 inch = 200 feet) of the lot or tract on which the facility is proposed to be located showing the acreage and dimensions of such site, name and location of adjacent public and private roads or the nearest public road, and the names of abutting owners and portions of their lands abutting the site;
3. A site plan (scale not less than 1 inch = 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, 100 year flood zones, waterways, wetlands and all associated equipment and structures on the site including elevations of all equipment and structures including sufficient detail to delineate the external finish of all structures and equipment;
4. Where relevant, a terrain profile showing the proposed facility and access road and existing and proposed grades; and,

5. The most recent area photograph (scale not less than 1 inch = 1,000 feet) showing the proposed site, access roads and all abutting properties.

H. A statement explaining mitigation measures for the proposed facility including:

1. Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas;
2. Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas:
3. Establishment of vegetation proposed near residential, recreation and scenic areas;
4. Special design features made specifically so that the proposed structures, buildings and appurtenances shall blend with pre-existing structures and buildings; and
5. Methods for preservation of vegetation for wildlife habitat and screening;

I. A description of the existing and planned land uses of the proposed prime and alternative sites and surrounding areas;

J. A description of the scenic, natural historic, and recreational characteristics of the proposed prime and alternative sites and surrounding areas;

K. Sight line graphs to the proposed prime and alternative sites from visually impacted areas such as residential developments recreational areas, and historic sites;

L. A list describing the type and height of all existing and proposed communication structures, buildings and appurtenances within a ten mile radius within the search area, or within any other area from which use of the proposed prime or alternative structure might be feasible from a location standpoint for purposes of the application;

M. A description of efforts to share existing and proposed structures, or consolidate telecommunications antennas of public and private services onto the proposed facility;

N. A description of the technical alternatives and a statement containing justification for the proposed facility;

O. A description of rejected sites with a U.S.C.G. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the location of rejected sites;

P. A detailed description and justification for the site selected, including a description of siting criteria and the process by which other possible sites were considered and

eliminated including, but not limited to, environmental effects, cost differential, coverages lost or gained, potential interference with other facilities and signal loss due to topographical features compared to the proposed prime and alternate sites;

Q. A statement describing hazards to human health, if any, with supporting data and references to regulatory standards;

R. A statement of the estimated costs for site acquisition and construction of a facility at the prime and alternative sites;

S. A schedule showing the proposed program of site acquisition, construction, completion, operation and relocation or removal of the existing facilities for the prime and alternative site;

T. A copy of any filing or application that the applicant has been required to make together with any decision with regard to such filing or application;

U. A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters;

V. Plans which show siting at a prime and at an alternate site;

W. A technical report which demonstrates that the maximum height of the installation is the minimum feasible to provide the intended service.

6.18.2.17 The Planning Board may also refer applications to the Board of Health and the Conservation Commission for review. Applications that propose the use of a site on National Park Service property shall also be sent to the Superintendent of the Cape Cod National Seashore.

6.18.2.18 Completeness. The Planning Board shall not approve any application that does not comply with all the requirements of this Bylaw.

6.18.3 Approval Criteria. The Planning Board shall act in accordance with the standards and requirements set forth herein and in accordance with sections 8.4.2 of this Bylaw and with the Massachusetts General Laws.

6.18.4 Severability. The invalidity of any section of this Bylaw shall not invalidate any other section.

6.18.5 The Planning Board may grant a special permit for an application which does not meet all the requirements of Section 6.18 provided the Planning Board makes a written finding which states why such action is in the best interests of the Town.

## **6.19 BED AND BREAKFAST**

Any Bed and Breakfast use, which is established or expanded, shall meet the requirements of the State Building code, the Board of Health, the fire Department and paragraph 6.3.12 of this Bylaw. No Bed and Breakfast use shall be established or expanded without a change of use permit issued by the Building Inspector. The Building Inspector shall not issue such a permit without a finding that all requirements of this Bylaw have been complied with.

## **6.20 ADULT ENTERTAINMENT USES**

(Approved by the Atty. General May 25,2000)(Amended Dec.4, 2000)

### 6.20.1 Authority

This Bylaw is enacted pursuant to M.G.L. Chapter 40A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of sexually oriented businesses, also known as adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

### 6.20.2 Purpose

It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of cities and town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in cities and towns. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Wellfleet and its inhabitants.

The provisions of this Bylaw have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this Bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter of materials. Neither is it the purpose or intent of this Bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

### 6.20.3 Definitions

Adult entertainment uses shall include the following uses:

1. Adult Bookstores, as defined by G.L. Ch.40A,Section 9A (see Section 2.1)
2. Adult Motion Picture Theatre, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
3. Adult Paraphernalia Store, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
4. Adult Video Store, as defined by G.L. Ch. 40A, Section 9A (see Section 2.1)
5. Any establishment which, to a substantial extent, or, as a principal use, displays live nudity for its patrons with the term "nudity" as defined in GL Ch. 272, Section 31.

### 6.20.4 Adult entertainment uses by special permit, criteria, and conditions

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this bylaw and may be permitted only upon the grant of a special permit by the Zoning Board of Appeals. Such special permit shall not be granted unless each of the following standards has been met.

- (1) The application for a special permit for an adult entertainment use shall provide the name, address, and telephone number of the legal owner and all principal investors of the establishment, the legal owner and all principal investors of the property, and the manager of the proposed establishment.
- (2) No adult entertainment use special permit shall be issued to any person convicted of violating the provisions of M.G.L. chapter 119, Section 63 or M.G.L. Chapter 272, Section 28. The applicant shall be responsible for all related costs for record check processing.
- (3) Adult entertainment uses shall not be located within:
  - (a) 500 feet from the nearest church, school (public or private), public beach, park, playground, play field, youth center, children's day care center, licensed home day care facility, library (public or private), or recreation facility; or
  - (b) 500 feet from the nearest establishment licensed under M.G.L. Chapter 138, Section 12; or
  - (c) 500 feet from any other adult entertainment use.

The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest property line of any of the designated uses set forth above.

In addition, no structure that contains an adult entertainment use shall be closer than 100 feet to any R1, or R2 residential zoning district boundary.

- (4) No part of any structure that contains an adult entertainment use shall be closer than 50 feet to any lot line, nor shall any adult use be permitted on any parcel containing less than 50,000 square feet of lot area or 150 feet of frontage, irrespective of the minimum lot and setback requirements contained in Section 5.4, Intensity of Use Schedule.
- (5) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- (6) No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials, to the general public on the exterior of the building or on the interior where the same may be seen through any openings in walls or roofing, doorways, or glass or other like transparent material, any sexually explicit figures or words as defined in M.G.L. Chapter 272, Section 31.
- (7) No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- (8) The proposed adult entertainment use shall comply with the off-street parking requirements set forth in this Bylaw.
- (9) No adult entertainment use shall have any flashing lights or neon signs visible from outside the establishment.
- (10) No adult entertainment use shall have a freestanding accessory sign or off-premise sign.
- (11) No adult entertainment use shall be established prior to submission and approval of a site plan by the Zoning Board of Appeals, pursuant of SECTION VI, subsection 6.3.13. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest R1 and R2 residential zoning district and the nearest property line of each of the uses set forth in subsection 6.20.4(3) above.
- (12) No adult entertainment establishment shall employ any person or persons who would be excluded as a permit holder under this Bylaw.

#### 6.20.5 Conditions

The special permit granting authority may impose reasonable conditions, safeguards and limitations on the time or use of any special permit granted, and may require that any such special permit granted shall be personal to the applicant, shall not run with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.

#### 6.20.6 Expiration

A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be automatically renewable for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon public safety factors applied at the time that the original special permit was granted.

#### 6.20.7 Variances

(Disapproved and deleted by Attorney General May 25, 2000)

#### 6.20.8 Severalty

The provisions of this section are severable and, in the event that any provisions of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

### **6.21 AFFORDABLE ACCESSORY DWELLING UNITS**

Purpose: For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

6.21.1 Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

6.21.2 Affordable accessory dwelling units created under this by-law shall be occupied exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

### 6.21.3 Requirements and Standards

- A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.
- B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.
- C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.
- D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.
- E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the “owner” shall mean one who holds legal or beneficial title.
- F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.
- G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.
- H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner’s ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

6.21.4 All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

6.21.5 Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

#### 6.21.6 Procedure

- A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.
- B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .
- C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.
- D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.
- E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

Acts 2010

CHAPTER 167 AN ACT RELATIVE TO PROPERTY TAX EXEMPTIONS FOR RENTAL PROPERTIES IN THE TOWN OF WELLFLEET RESTRICTED AS AFFORDABLE HOUSING. (see [House, No. 2852](#)) Approved by the Governor, July 8, 2010

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** Notwithstanding any general or special law to the contrary, dwelling units, in the town of Wellfleet, occupied by income eligible households and rented for an amount not exceeding the fair market rents established by the United States Department of Housing and Urban Development shall be exempt from taxation under chapter 59 of the General Laws.

**SECTION 2.** Households leasing and occupying the affordable dwelling unit shall upon initial application and annually thereafter, on September first, submit to the town of Wellfleet or its agent, documentation necessary to confirm their eligibility for the dwelling unit. Dwelling units shall be

rented to those meeting the guidelines for a low or moderate income family. For the purposes of this act, low income households shall have an income less than 80 per cent of the town of Wellfleet median household income, as established by the United States Department of Housing and Urban Development for Barnstable Town Metropolitan Statistical Area and moderate income households shall have an income between 80 per cent and 120 per cent of the town of Wellfleet median household income as calculated on the basis of the same area median income statistic as determined by the United States Department of Housing and Urban Development published income guidelines, as calculated on the basis of the same area median income statistic.

**SECTION 3.** Maximum rents shall not exceed fair market rents established by the United States Department of Housing and Urban Development for the period commencing October 1 of the most recent year. Property owners shall submit to the town of Wellfleet or its agent information on the rents to be charged. Each year thereafter, on the first day of September, they shall submit information on annual rents charged and a signed lease to the town or its agent. Forms for this purpose shall be provided.

**SECTION 4.** The exemption shall be equal to the tax otherwise owed on the property based on the assessed value of the property, including accessory dwelling units, multiplied by the square feet of the living space of all dwelling units on the property that are restricted to occupancy by low or moderate income households, divided by the total square feet of structures on the property. For property with a single dwelling unit, the exemption allowed shall not exceed 50 per cent of the tax otherwise owed. For purposes of determining the assessed value of the property, if by income approach to value, the assessment shall assume that all housing units are rented at fair market rent as determined by the United States Department of Housing and Urban Development. To be eligible for exemption, the housing unit shall be leased to a low or moderate income household at such rents for the entire fiscal year for which the exemption is sought.

**SECTION 5.** The date of determination as to the qualifying factors required by this act shall be the first day of September of each year.

**SECTION 6.** This act shall be submitted to the voters of the town of Wellfleet at the next annual or special town election in the form of the following question which shall be placed upon the official ballot to be used at said election:

“Shall an act passed by the General Court in the year 2010 entitled ‘An Act Relative to Property Tax Exemptions for Rental Properties in the town of Wellfleet Restricted as Affordable Housing’, be accepted?”

If a majority of the votes cast in answer to the question is in the affirmative, then this act shall take effect, but not otherwise. *Approved July 19, 2010*

Voted at Annual Town Election May 2, 2011.

## 6.22 HOME OCCUPATIONS

### 6.22.1 Allowed occupations and professions

In particular, a home occupation, as defined in SECTION II, DEFINITIONS, includes, but is not limited to the following:

Antique Shop, Art Gallery, Artists Studio, and Craft Shop making and selling traditional Cape Cod products produced on the premises. ATM 4/24/89

Dressmaker

Home cooking & selling of such products produced upon the premises.

Opening of shellfish, the storage and use of fishing equipment or other traditional fishing activities.

Professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same.

Real Estate Offices.

Service trades (electrician, carpenter, general contractor, plumber, service contractor or the like).

However, a home occupation shall not be interpreted to include the following:

Tourist home

Barber shop & beauty parlors

Commercial stables & kennels

Restaurants & tea rooms

Convalescent homes

Mortuary establishments

Stores, trades or business not herein accepted.

### 6.22.2 Requirements and Standards

Home Occupations shall conform to the following standards:

1) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

2) No more than one person outside the family shall be employed in the home occupation.

3) There shall be no exterior display, no exterior sign except as permitted under Section VII, no exterior indication of the home occupation or variation from the residential character of the principal building.

4) No offensive noises, vibration, smoke, dust, odor, heat or glare shall be produced.

5) The floor area used by the home occupation shall not exceed 25% of the total floor area of the principal and any accessory building.

6) No outside storage of home-occupation-related materials or equipment is permitted on the occupant's premises unless concealed from view of neighbors and street by a fence or suitable plantings of evergreen or deciduous shrubs and trees.

## 6.23 SERVICE TRADES

### 6.23.1 Requirements and Standards

Service trades, as defined in SECTION II, DEFINITIONS, may be operated out of the provider's residence subject to the following restrictions:

- A. The business is secondary to the use of the dwelling unit for residential purposes;
- B. No more than two (2) employees other than household members may report to the provider's residence for regular work on the premises;
- C. No outdoor storage of service-related materials or equipment is permitted on the provider's premises unless concealed from view of neighbors and street by a concealing fence enclosing said materials and equipment;
- D. No more than two (2) motor vehicles (as that term is defined by the Massachusetts General Laws, Chapter 90, Section 1, but containing no more than six (6) wheels), used exclusively in the service trade, may be kept on the provider's premises;
- E. Deliveries may be made to the provider's premises no more frequently than an average of five (5) times a weeks;
- F. There shall be no exterior sign or other display except as permitted under the Sign Code for a residential district, and no exterior indication of the service trade which detracts from or is in conflict with the residential character of the principal building and area;
- G. The buildings and premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emission of odor, gas smoke, dust, noise, and electrical disturbances. In the case of electrical disturbances, no equipment or process shall be used which unreasonably creates visual or audible interference in any radio or television receivers off the premises.
- H. The floor area used shall not exceed thirty percent (30%) of the total livable floor space in the principal building; and
- I. All parking shall be off-street, and long term parking (more than six (6) hours) shall be limited to two (2) vehicles, excluding the resident's personal household vehicle.

## **6.24 National Seashore Park District Special Permit**

### **6.24.1 PURPOSE OF NATIONAL SEASHORE PARK DISTRICT SPECIAL PERMIT**

The purpose of the National Seashore Park District Special Permit is to review proposed structures and alterations to existing structures to ensure protection of the legitimate interests of the adjoining property owners; to encourage construction that is sensitive to the scale, size and massing of buildings; to protect continued public visual access to ponds, rivers, marshes, the ocean and the bay; to provide additional means of addressing environmental needs and concerns of the Town, and to recommend alternatives so that development or redevelopment minimizes the impact on abutting land, the neighborhoods and the community at large.

Further, the purpose of the National Seashore Park District Special Permit is to ensure that the National Seashore Park District Objectives found in Section 3.2 of this By-law, are adhered to and that the proposed building changes are not detrimental to these objectives; and are compatible with these objectives.

### **6.24.2 APPLICABILITY**

A National Seashore Park District Special Permit is required for any private property within the boundaries of the Cape Cod National Seashore whose owner proposes to tear down, build anew, make alterations to, or relocate existing buildings, or add new accessory buildings that would:

- a. exceed the Maximum Site Coverage in the National Seashore Park District listed in Section 5.4.3.1 of this By-law, or
- b. otherwise increase the nonconforming nature of the structure, within the standards of §6.1.5 of this By-law.
- c. nothing in Section 6.24 shall be construed as authorizing the issuance of a special permit which exceeds the limitations for Dwelling Space Area and for Site Coverage set forth in Section 5.4.3.1(d).

### **6.24.3 STANDARDS AND CRITERIA**

In addition to the standards and criteria listed in Section 8.4.2 of this By-law, the following criteria shall apply to properties within the National Seashore Park District that are subject to a Special Permit:

1. The landscape shall be preserved in its natural state insofar as practical. The Board shall encourage the applicant to avoid grade changes and the removal of native vegetation and soil. Any grading or earth-moving shall be planned and executed in such a manner, and retain to the extent practicable final contours consistent with existing terrain both on and adjacent to the site.

2. Proposed buildings and foundations shall to the extent practicable, minimize alteration on steep slopes, flood plains, hilltops, dunes, coastal banks, scenic views and wetlands to preserve the integrity and scenic qualities of natural features whenever possible. Proposed developments shall take into account and, to the extent practicable, minimize obstruction of water views and other scenic views from publicly accessible locations.

3. Proposed developments shall preserve and protect unusual or rare natural and/or historical features. Development and redevelopment shall not interfere with legal access. Proposed developments should minimize obstruction of water views and other scenic views from publicly accessible locations. Electric, telephone, cable and other utility lines shall be installed underground unless the Board determines that the benefits to be achieved are outweighed by costs or other factors.

4. The protection of unusual or significant environmental resources including protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies is critical and shall be evaluated. All runoff shall be recharged on site based on a calculated 25-year storm. Storm water infiltration systems shall be designed so that run-off shall not be increased, groundwater recharge is maximized, pollution impacts are minimized and neighboring properties will not be adversely affected.

5. Lighting must be consistent with General Bylaws of the Town of Wellfleet. There shall be protection of adjacent properties and the night sky from intrusive lighting. Consideration should be given to the placement of decks and patios and their potential for noise pollution and its adverse impact on adjacent properties.

6. In addition to the Maximum Site Coverage table allowance for the lot size, the Board shall consider the Cape Cod National Seashore's 50% Use Guideline. Proposed development shall not exceed the 50% formula unless the Board finds that the development shall not have a significant adverse impact on the scenic views and on the prevailing scale, mass and character of the neighborhood and zoning district.

The Cape Cod National Seashore's 50% expansion guideline is based on "the livable area of the single-family residence that existed as of Sept 1, 1959" and allows for 50% expansion to the single-family dwelling; and of this expansion total sum another 50% is allowed for use on an accessory structure(s). For example, 1,000 sq. ft. of single-family dwelling living space as of September 1, 1959 is expandable to 1,500 sq. ft., and of this total sum another 750 sq. ft. is allowable for an accessory building.

## 6.25 MUNICIPAL WIND TURBINES

Purposes – The purpose of this by-law is to allow by Special Permit utility scale wind facilities on municipally owned land and to provide for standards for the placement, design, construction, monitoring, upkeep, modification and removal of wind facilities that address public safety and consideration of environmental and community impacts, including impacts on scenic, natural, historic resources, and provide adequate financial assurance for decommissioning. Any physical modifications to existing wind facilities that alters the type or increases the size of such facilities or other equipment shall require a Special Permit.

### 6.25.2 Definitions

Utility-Scale Wind Facility – a wind facility with a rated capacity of 100 KW or more and where the primary use of the facility is electrical generation to be provided into the electrical grid.

Wind Turbine (WT) – A device which converts wind energy to electrical energy, which typically includes a support tower.

Wind Facility (WF) – All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Rotor - The blades plus the hub to which the blades are attached

Tip Height - Height of the tip of the rotor blade when extended 90 degrees from grade, as measured from the base at grade of the support tower.

### 6.25.3 General Requirements

A. The Applicant shall be the WF operator, if one exists, and the Town of Wellfleet as the land owner.

B. Utility-Scale Wind Facilities shall be permitted by a Special Permit from the Planning Board acting as the Special Permit Granting Authority (SPGA) provided that the Planning Board makes a finding that the wind facility complies with the following conditions:

- 1) the specific site is an appropriate location for such use;
- 2) the use is not expected to adversely affect the surrounding area or neighborhood;
- 3) there is not expected to be any serious hazard to the public and general welfare of the Town, and no nuisance is expected to be created by the use;

- 4) the potential environmental benefits outweigh the potential adverse environmental impacts;
- 5) adequate and appropriate facilities and resources will be provided for the proper operation of the use.
- 6) adequate resources will be provided for the removal of the WF after its useful life.

Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.

C. Compliance with Laws, Ordinances and Regulations - The construction and operation of all such wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all safety, construction, environmental, electrical, communications and aviation requirements.

D. Proof of Liability Indemnification - The Applicant shall provide evidence of adequate indemnification for all risks, including possibly by way of liability insurance in an amount and for the duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility. There shall be a minimum indemnification amount equal to two million dollars (\$2,000,000).

E. Site Control - The applicant shall provide documentation of the actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent use or construction of any structure for human habitation within the setback areas.

F. Prior to filing an application for a Special Permit, but not more than 180 days prior to filing the application, the Applicant shall arrange for a balloon or crane test at the proposed site or at a site not more than 100 feet from the proposed site. The balloon test shall be conducted for duration of not less than six hours during full daylight. The date range and time of the test shall be advertised in a newspaper of general circulation in the Town at least 7 days prior to the test, but not more than 30 days prior to the test. In addition, notice shall be provided to the Town Administrator, abutters and abutting Historic Commissions and to the Town Clerks of all adjacent towns. The balloon test shall demonstrate the hub height and maximum rotor blade tip height of the Wind Turbine Generator by tethering one balloon at the hub height and one balloon at the maximum tip height of a rotor blade for the turbine model to which the Special Permit will apply.

#### 6.25.4 General Siting Standards

- A. The maximum allowable Tip Height shall be no greater than four hundred (400) feet.
- B. Minimum setback distance for a WT from the Applicant's property line shall be at least equal to the maximum Tip Height. Set backs will be measured to the center of the tower base. The setback

from an Applicant's lot line may be reduced with the written permission or granting of an easement to the Town by the abutting property owner(s) and the SPGA. Setbacks for facilities other than the tower will conform with Wellfleet Zoning Bylaws.

The SPGA may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a Special Permit under the provisions of this Section.

#### 6.25.5 Design Standards

A. Color and Finish - The SPGA shall approve the WT color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.

B. Lighting - WT(s) shall be lighted only, and only to the extent, if required by the Federal Aviation Administration. Lighting of the other parts of the WF, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be designed to minimize glare, and otherwise shielded and down cast to reduce light pollution.

C. Signs - Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:

- 1) Those necessary to identify the wind facility owner, provides a 24-hour emergency contact phone number, and warnings of any danger at the base of the wind facility.
- 2) Educational signs providing information about the facility and the benefits of renewable energy are exempt from the sign code, but must be approved as part of the SPGA permit process.
- 3) Advertising shall not be allowed on the WT except for reasonable identification of the manufacturer or operator of the wind facility.

D. Utility Connections - Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

E. Appurtenant Structures - All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever feasible, structures should be shaded from view by vegetation and/or clustered to avoid adverse visual impacts.

#### 6.25.6 Safety, Aesthetic and Environmental Standards

A. Emergency Services - The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the SPGA. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.

B. Unauthorized Access – WT's and other structures part of the WF shall be designed to prevent unauthorized access.

C. Shadow/Flicker - A shadow and flicker analysis performed by an independent qualified engineer in order to determine the degree and effect of potential shadow and flicker upon abutting dwellings.

D. The wind facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the SPGA agree that those provisions shall not be applicable. A Wind Facility will be considered to be violating these regulations if the source:

- 1) Increases the broadband sound level by more than 10dB(A) above ambient, or
- 2) Produces a "pure tone" condition - when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited dwelling. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from the DEP.

For purposes of permit application consideration the SPGA will accept a sound modeling analysis performed by an independent qualified engineer which is consistent with the Massachusetts Department of Environmental Protection guidance for sound measurement (310 CMR 7.10) based on the WF manufacturer's sound information on the proposed WT.

The SPGA, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

E. Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations and ordinances.

#### 6.25.7 Monitoring and Maintenance

A. Facility Maintenance - The wind facility shall be maintained in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security and safety measures. Site Access and Control shall be maintained to an acceptable level. The recipient of the

Special Permit shall be responsible for the cost of maintaining the wind facility and any access road(s) and the cost of repairing any damage occurring as a result of operation and construction.

B. Modifications - All modifications to a wind facility made after issuance of the special permit shall require approval by the SPGA as provided in this section.

#### 6.25.8 Abandonment or Decommissioning

A. Removal Requirements - Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than one hundred fifty (150) days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored, if a natural site to a state of reasonable conditions to revert back to its pre-construction natural state, or if a previously developed site a state similar to its prior state. More specifically, decommissioning shall consist of:

- 1) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
- 2) Disposal of all solid and hazardous waste in accordance with local and state disposal regulations.
- 3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave designated below-grade foundations in order to minimize erosion and disruption to existing vegetation.

B. Abandonment - Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the SPGA. The SPGA shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the owner/operator fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property and physically remove the facility.

C. Financial Surety - The SPGA may require the applicant to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the facility, of an amount and form determined to be reasonable by the SPGA, but in no event to exceed one hundred twenty five percent (125%) of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.

#### 6.25.9 Application Process & Requirements

All applications shall be filed with the Wellfleet Town Clerk along with ten (10) copies and the required fee. Pursuant to section 53G of Chapter 44 of the Massachusetts General Laws, the SPGA shall have the authority to require that the applicant pay for necessary professional services reasonably required to review and to analyze adequately the contents of any site plan or related impact study.

Upon receipt of the application by the Wellfleet Town Clerk, the SPGA shall hold an advertised public hearing within sixty-five (65) days. Said advertisement shall appear in a local newspaper of general publication no less than fourteen (14) days prior to the scheduled public hearing. It shall be the responsibility of the SPGA to notify abutters and abutters to abutters within three hundred (300) feet via first class mail, with said mailing to take place no less than fourteen (14) days prior to the scheduled public hearing.

All Applications submitted under this section for final review shall include:

A. Completed application form.

B. Certified list of abutters and abutters to abutters within three hundred (300) feet prepared and certified by the Town of Wellfleet Assessor.

C. A site plan. All site plans shall be prepared by a Registered Land Surveyor or Registered Civil Engineer. All site plans shall be prepared at an appropriate scale suitable for the content of the topic covered on the sheet and shall include the following:

- 1) The location and boundaries of the lot including monuments, adjacent street/ways and a list showing names and addresses of direct abutters and abutters to the abutters within 300 feet,
- 2) Existing and proposed topography showing five (5) foot contours showing benchmark used and significant land features, natural and man made, including, but not limited to, the location of wetlands, streams, bodies of water, drainage swales and areas subject to flooding,
- 3) Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc., including dimensions and all elevations,
- 4) The existing and proposed location of driveways, walkways, access and egress points, and the location and number of parking spaces, all proposed changes to the landscape of the site, including grading, vegetation clearing and planting, and exterior lighting, other than FAA lights, and screening vegetation.

D. Certification of height approval from the Federal Aeronautics Administration (FAA)

E. Visualizations - The SPGA shall select between three and six sight lines, including from the nearest dwelling(s) and other public ways and or sites, with a view of the WF(s), for pre- and post-construction view representations. Sites for view representations shall be selected from populated

areas or public ways within a 2-mile radius of the wind facility. View representations shall have the following characteristics:

- 1) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WT(s) on the pre-construction photographs of existing views.
- 2) All view representation will include descriptions of the locations, distances, and focal length of camera lens used.

F. Include approvals from other regulatory boards and commissions required, including but not limited to the Board of Health, the Conservation Commission, the Historic Review Commission, but with the exception of a Special Permit from the Zoning Board of Appeals, if anticipated, or other permits which legally must succeed the Site Plan Approval by the SPGA.

G. Operation & Maintenance Plan - The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as general procedures for operational maintenance of the wind facility.

The SPGA shall have the right upon good cause to waive all or any part of the above site plan content requirements, such waiver to occur within a duly noticed public meeting or public hearing.

#### 6.25.10 SPGA Decision

The SPGA shall issue a decision within ninety (90) days following the date of the public hearing. The applicant shall be responsible for filing the SPGA decision at the Barnstable Registry of Deeds or Land Court, as applicable. Prior to the issuance of a building permit, the applicant shall present evidence of such recording to the Building Commissioner and the Planning Board Secretary.

#### 6.25.11 Term of Special Permit

A special permit issued for a wind facility shall be valid for twenty five (25) years, unless extended or renewed. The time period may be extended or the permit renewed by the SPGA upon satisfactory operation of the wind facility. Request for renewal must be submitted at least one hundred eighty (180) days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the SPGA acts. At the end of that period (including extensions and renewals), the WF shall be removed as required by this section.

The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquires and complaints throughout the life of the project.

## **6.28 PROVISIONS TO ENCOURAGE THE DEVELOPMENT OF AFFORDABLE DWELLINGS IN WELLFLEET (Added 4/26/2011)**

### **6.28.1 Purpose**

The purpose of this by-law is to further the goal of encouraging various lot sizes and housing types for persons of various income levels in accordance with Massachusetts General Laws, Chapter 40A, Section 9 which allows municipalities to adopt "incentive" ordinances for the creation of affordable year round dwellings, and for the purpose of helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and maintaining a stable economy by preventing out-migration of residents who provide essential services.

### **6.28.2 Definitions**

Affordable Dwelling Development - A tract of land of fifty thousand square feet (50,000 sf) or more containing units of residential housing, of which at least twenty-five percent (25%) are encumbered by affordable dwelling deed restrictions.

Dwelling, Affordable - A dwelling unit which is subject to an affordable dwelling restriction, pursuant to Section 6.28.7, and on a minimum lot size of 20,000 sf

### **6.28.3 Authority**

The Planning Board is hereby designated the special permit granting authority for all Affordable Dwelling Development applications under this by-law, and shall have the power to hear and decide applications for special permits and to adopt regulations for carrying out its duties under this by-law.

For the purpose of promoting the development of affordable dwellings in Wellfleet, the Planning Board may by special permit allow the creation of Affordable Dwellings in residential and commercial zoning districts consistent with Section 5.3.1 of the Zoning By-laws. All Affordable Dwellings created shall be for the primary and sole domicile of the eligible tenant or owner for year-round occupancy.

### **6.28.4. Special Permit Requirements for Affordable Dwellings**

A. The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable under Section 3.1.3.2 where:

(1) the number of units to be restricted under Section 6.28 equals or exceeds twenty-five percent (25%) of the total units, and;

(2) the applicant demonstrates that the proposed parking is sufficient to address the parking needs of the Affordable Dwelling and/or Affordable Dwelling Development.

B. The second unit created, and at a minimum, every fourth unit created there-after shall be deed restricted as permanently affordable units, per the applicable standards in Section 6.28.7 below.

C. An Affordable Dwelling Unit must have the following minimum areas:

- studio two hundred fifty (250) square feet
- one bedroom units seven hundred (700) square feet
- two bedroom units nine hundred (900) square feet
- three bedroom units one thousand two hundred (1,200) square feet
- four bedroom units one thousand four hundred (1,400) square feet

D. The Affordable Dwelling Development must conform to all other requirements of the Zoning By-law. In the event that a provision of Section 6.28 conflicts with another provision of the By-law, the provisions of Section 6.28 shall control.

#### 6.28.5 Standards and Criteria

In reviewing applications under this by-law, the Planning Board shall apply the following standards and criteria:

A. At least twenty-five percent (25%) of all dwelling units created under this by-law shall be restricted as provided for under 6.28.7;

B. At least twenty-five percent (25%) of the total number of bedrooms within any Affordable Dwelling Development shall be within said restricted dwelling units;

C. The applicant has conformed to the standards and criteria of this by-law and will deliver the needed Affordable Dwelling Units;

D. The proposed development is suitable for the proposed location, with proportions, orientation, materials, landscaping and other features that provide a stable and desirable character complementary and integral with the site's natural features;

E. The development, density increase or relaxation of zoning standards has no material, detrimental effect on the character of the neighborhood or Town and is consistent with the performance standards in Section 8.4.2 of the Wellfleet Zoning By-laws.

#### 6.28.6 Area, Setback and Frontage Requirements for Affordable Dwelling Units and Developments

A. The Planning Board shall have discretion to reduce or suspend the minimum area and frontage requirements otherwise applicable under Section 5.4.1 of the Wellfleet Zoning By-laws for an Affordable Dwelling Development, provided however that there must be at least 10,000 square feet of lot area for each bedroom created in an Affordable Dwelling Development.

B. Where an applicant proposes to divide the tract of land that is the locus of a proposed Affordable Dwelling Development, the minimum lot size shall be twenty thousand (20,000) square feet for each affordable unit. All other units included in the development shall comply with lot area requirements in Section 5.4.1 of this Zoning By-law.

C. The Planning Board may, in its sole discretion, reduce the front, side or rear yard setback requirements of Section 5.4.2, provided however, that said setbacks shall be no less than ten (10) feet.

D. In the case of a subdivided lot, the Planning Board shall have discretion to reduce or suspend the minimum road width for access and frontage may be created through the establishment of a common driveway deemed to provide safe and adequate access.

E. The Planning Board shall have the discretion to permit a density of less than 10,000 square feet for each bedroom if the applicant can demonstrate to the satisfaction of the Planning Board and the Board of Health that the sewage disposal system servicing the development will result in nitrogen loading of less than ten (10) parts per million.

#### 6.28.7 Affordable Dwelling Restrictions

As a condition to any special permit issued under Section 6.28, the applicant shall be required to execute an affordable dwelling restriction (“Restriction”) in a form acceptable to the Planning Board. All restrictions shall be for perpetuity or the longest period allowed by law. The special permit shall not be exercised until the applicant records the Restriction in the Registry of Deeds.

A. The Restriction shall provide that units made available for ownership shall be made available to households earning at or below eighty percent (80%) of the Barnstable County median income (BCMI), adjusted for household size.

The initial sales price of such units shall be calculated on the basis of what a household at seventy percent (70%) of the BCMI could afford to pay (assume a household size of one more than the number of bedrooms in the unit). In determining this amount:

1) no more than thirty percent (30%) of the household’s gross income may be allocated to housing

costs (mortgage principal and interest, real estate taxes, house and private mortgage insurance, and any homeowners' association or condominium fees);

2) current interest rates offered for thirty (30) year, no point fixed rate loans with down payments of 5% of total cost shall be applied; and

3) current real estate taxes for the Town of Wellfleet shall be used.

B. Any lot containing an Affordable Dwelling shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the Affordable Dwelling except leasehold estates for the term of the restriction or sale to an income qualified individual or family in accordance with Section 6.28.7 below.

C. It shall be a condition upon every special permit issued under this by-law that the applicant shall comply with any Massachusetts Department of Housing and Community Development ("DHCD") regulations under Chapter 40B of the Massachusetts General Laws and guidelines for qualification of the dwelling units created under this By-law towards the Town's subsidized housing inventory, including but not limited to the form of the affordable dwelling restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards and maximum rent or sale price.

D. In the event that a dwelling unit subject to a restriction created under this By-law becomes vacant, the owner shall give written notice to the Wellfleet Housing Authority.—It is the intent of this by-law that a local preference shall be used in filling vacancies to the extent permitted by DHCD regulations and guidelines and state or federal laws.

E. An Affordable Dwelling available for rental shall be rented to households earning at or below eighty percent (80%) of the Barnstable County median income (BCMI), adjusted for household size. Maximum rents for studio, one-bedroom, two-bedroom, etc., units respectively, shall be in accordance with current Housing and Urban Development (HUD) published Fair Market Rental Guidelines for Barnstable County.

All occupants of the affordable dwelling shall upon initial application and annually thereafter submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit.

Property owners are required to submit to the Town or its agent information on the rents to be charged along with a lease for a one year period. Each year thereafter they shall submit information to the Town or its agent on annual rents charged along with a one year lease.

F. This section shall not prevent a lot owner from building an affordable dwelling that meets the requirements of this by-law and from transferring such dwelling and lot to an income eligible immediate family member (sibling, parent or child) by gift or inheritance, provided that the restriction required by Section 6.28.7 is properly recorded prior to issuance of a building permit.